

Comptroller of the Currency, Treasury

§ 8.2

(2) The deterrence of misuse by customers of banking services;

(3) The enhancement of the competitive position of the bank in accordance with the bank's marketing strategy; and

(4) The maintenance of the safety and soundness of the institution.

(c) *Interest.* Charges and fees that are "interest" within the meaning of 12 U.S.C. 85 are governed by § 7.4001 and not by this section.

(d) *State law.* The OCC evaluates on a case-by-case basis whether a national bank may establish non-interest charges or fees pursuant to paragraphs (a) and (b) of this section notwithstanding a contrary state law that purports to limit or prohibit such charges or fees. In issuing an opinion on whether such state laws are preempted, the OCC applies preemption principles derived from the Supremacy Clause of the United States Constitution and applicable judicial precedent.

(e) *National bank as fiduciary.* This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by 12 CFR part 9.

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

Sec.

8.1 Scope and application.

If the banks' total assets (consolidated domestic and foreign subsidiaries) are:		The semiannual assessment is:		
Over—	But not over—	This amount—	Plus	Of excess over—
Column A	Column B	Base amount	Marginal rates	
Column A	Column B	Column C	Column D	Column E
Million	Million			Million
\$0	\$2	\$0	Y1	\$0
2	20	X1	Y2	2
20	100	X2	Y3	20
100	200	X3	Y4	100
200	1,000	X4	Y5	200
1,000	2,000	X5	Y6	1,000
2,000	6,000	X6	Y7	2,000
6,000	20,000	X7	Y8	6,000
20,000	40,000	X8	Y9	20,000
40,000		X9	Y10	40,000

(1) Every national bank falls into one of the ten asset-size brackets denoted by Columns A and B. A bank's semiannual assessment is composed of two

8.2 Semiannual assessment.

8.6 Fees for fiduciary activities examinations, special examinations and investigations fees, examination of affiliates, examinations related to corporate activities.

8.7 Payment of interest on delinquent assessments and examination and investigation fees.

8.8 Notice of Comptroller of the Currency fees.

AUTHORITY: 12 U.S.C. 93a, 481, 482, and 3102 and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 93A, 481, 482 and 3102; 15 U.S.C. 78 c and l; and 26 D.C. Code 102.

[55 FR 49842, Nov. 30, 1990]

§ 8.2 Semiannual assessment.

(a) Each national bank and each District of Columbia bank shall pay to the Comptroller of the Currency a semiannual assessment fee, due by January 31 and July 31 of each year, for the six-month period beginning 30 days before each payment date. The amount of the semiannual assessment paid by each bank is computed as follows:

parts. The first part is the calculation of a base amount of the assessment, which is computed on the assets of the bank up to the lower endpoint (Column

A) of the bracket in which it falls. This base amount of the assessment is calculated by the OCC in Column C.

(2) The second part is the calculation by the bank of assessments due on the remaining assets of the bank in excess of Column E. The excess is assessed at the marginal rate shown in Column D.

(3) The total semiannual assessment is the amount in Column C, plus the amount of the bank's assets in excess of Column E times the marginal rate in Column D: Assessments = C + [(Assets—E) x D].

(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts less than the percentage change in GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

(5) The specific marginal rates and complete assessment schedule will be published in the "Notice of Comptroller of the Currency Fees", provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the bank's most recent "Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries)" (Call Report) preceding the payment date. The assessment shall be computed in the manner and on the form provided by the Comptroller of the Currency. Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report required by the Office under 12 U.S.C. 161 is subject to the full assessment for the next six-month period.

(6)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead bank by a percentage that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (a)(6):

(A) *Lead bank* means the largest national bank controlled by a company, based on a comparison of the total as-

sets held by each national bank controlled by that company as reported in each bank's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead bank* means a national bank that is not the lead bank controlled by a company that controls two or more national banks.

(C) *Control* and *company* have the same meanings as these terms have in sections 2(a)(2) and 2(b), respectively, of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 (a)(2) and (b)).

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

(b)(1) Each Federal branch and each Federal agency shall pay to the Comptroller of the Currency on or before January 31 and July 31 of each year a semiannual assessment fee for the six month period beginning thirty days before each payment date.

(2) The amount of the semiannual assessment paid by each Federal branch and Federal agency shall be computed at the same rate as provided in the Table in 12 CFR 8.2(a); however, only the total domestic assets of the Federal branch or Federal agency shall be subject to assessment.

(3) Each semiannual assessment of each Federal branch or Federal agency is based upon the total assets shown in the Call Report most recently preceding the payment date. The assessment shall be computed in the manner and on the form provided by the OCC. Each Federal branch or Federal agency subject to the jurisdiction of the OCC on the date of the second and fourth Call Reports is subject to the full assessment for the next six month period.

(4)(i) Notwithstanding any other provision of this part, the OCC may reduce the semiannual assessment for each non-lead Federal branch or agency by an amount that it will specify in the Notice of Comptroller of the Currency Fees described in § 8.8.

(ii) For purposes of this paragraph (b)(4):

Comptroller of the Currency, Treasury

§ 8.7

(A) *Lead Federal branch or agency* means the largest Federal branch or agency of a foreign bank, based on a comparison of the total assets held by each Federal branch or agency of that foreign bank as reported in each Federal branch's or agency's Call Report filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) *Non-lead Federal branch or agency* means a Federal branch or Federal agency that is not the lead Federal branch or agency of a foreign bank that controls two or more Federal branches or agencies.

(5) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (b)(1) through (b)(4) of this section by multiplying that figure by 1.25 for each Federal branch or Federal agency that receives a ROCA rating (which rates risk management, operational controls, compliance, and asset quality) of 3, 4, or 5 at its most recent examination.

[44 FR 20065, Apr. 4, 1979, as amended at 49 FR 26205, June 27, 1984; 49 FR 50602, Dec. 31, 1984; 53 FR 48627, Dec. 1, 1988; 55 FR 49842, Nov. 30, 1990; 57 FR 22416, May 28, 1992; 61 FR 64002, Dec. 2, 1996; 62 FR 54745, Oct. 21, 1997; 62 FR 64137, Dec. 4, 1997]

§ 8.6 Fees for fiduciary activities examinations, special examinations and investigations fees, examination of affiliates, examinations related to corporate activities.

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 481 and 482, the Office of the Comptroller of the Currency assesses a fee for examining fiduciary activities of national and District of Columbia banks and related entities, for conducting special examinations and investigations of national and District of Columbia banks, for conducting examinations of affiliates of national and District of Columbia banks, and for conducting examinations and investigations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities.

(b) *Notice of Comptroller of the Currency Fees.* The OCC publishes the fee schedule for fiduciary activities, special examinations and investigations, examinations of affiliates and examinations related to corporate activities

in the Notice of Comptroller of the Currency Fees described in § 8.8.

[59 FR 59642, Nov. 18, 1994]

§ 8.7 Payment of interest on delinquent assessments and examination and investigation fees.

(a) Each national bank, each district bank, each Federal branch, and each Federal agency shall pay to the Comptroller of the currency interest on its delinquent payments of semiannual assessments. In addition, each national bank and each entity with a trust department examined by the Comptroller of the Currency and each institution that is the subject of a special examination or investigation conducted by the Comptroller of the Currency shall pay to the Comptroller of the Currency interest on its delinquent payments of examination and investigation fees. Semiannual assessment payments will be considered delinquent payments of examination and investigation fees. Semiannual assessment payments will be considered delinquent if they are received after the time for payment specified in § 8.2. Examination and investigation fees will be considered delinquent if not received by the Comptroller of the Currency within 30 calendar days of the invoice date.

(b) Where an entity which is required to make semiannual assessment payments or trust examination fee payments determines that it has made any such payment in an amount exceeding that required by the Comptroller of the Currency, that entity shall provide the Office of Financial Operations, Comptroller of the Currency, with written notice of the overpayment. Within 30 calendar days of receipt of such notice, the Comptroller of the Currency shall either—

(1) Refund the amount of the overpayment or

(2) Provide notice of its unwillingness to accept the calculation of overpayment. In the latter instance, the Comptroller of the Currency and the entity claiming the overpayment shall thereafter attempt to reach agreement on the amount, if any, to be refunded; the Comptroller of the Currency shall refund this amount within 30 calendar days of such agreement.

§ 8.8

The Comptroller of the Currency shall be considered delinquent if it fails to return an overpayment in accordance with the time limitations specified in this paragraph (b). The Comptroller of the Currency shall pay interest on any such delinquent payments.

(c) Interest on delinquent payments, as described in paragraphs (a) and (b) of this section, will be assessed beginning the first calendar day on which payment is considered delinquent, and on each calendar day thereafter up to and including the day payment is received. Interest will be simple interest, calculated for each day payment is delinquent by multiplying the daily equivalent of the applicable interest rate by the amount delinquent. The rate of interest will be the United States Treasury Department's current value of funds rate (the "TFRM rate"); that rate is issued under the Treasury Fiscal Requirements Manual and is published quarterly in the FEDERAL REGISTER. The interest rates applicable to a delinquent payment will be determined as follows:

(1) For delinquent days occurring from January 1 to March 31, the rate will be the TFRM rate that is published the preceding December for the first quarter of the ensuing year.

(2) For delinquent days occurring from April 1 to June 30, the rate will be the TFRM rate that is published the preceding March for the second quarter of that year.

(3) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published the preceding June for the third quarter of that year.

(4) For delinquent days occurring from October 1 to December 31, the rate will be the TFRM rate that is published the preceding September for the fourth quarter of that year.

[48 FR 30599, July 1, 1983. Redesignated and amended at 49 FR 50605, Dec. 31, 1984]

§ 8.8 Notice of Comptroller of the Currency fees.

(a) *December notice of fees.* A "Notice of Comptroller of the Currency Fees" shall be published no later than the first business day in December of each year for fees to be charged by the Office during the upcoming year. These

12 CFR Ch. I (1–1–99 Edition)

fees will be effective January 1 of that upcoming year.

(b) *Interim notice of comptroller of the Currency fees.* The Office may issue an "Interim Notice of Comptroller of the Currency Fees" or issue an amended "Notice of Comptroller of the Currency Fees" from time to time throughout the year as necessary. Interim or amended notices will be effective 30 days after issuance.

[55 FR 49842, Nov. 30, 1990]

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

REGULATIONS

Sec.

- 9.1 Authority, purpose, and scope.
- 9.2 Definitions.
- 9.3 Approval requirements.
- 9.4 Administration of fiduciary powers.
- 9.5 Policies and procedures.
- 9.6 Review of fiduciary accounts.
- 9.8 Recordkeeping.
- 9.9 Audit of fiduciary activities.
- 9.10 Fiduciary funds awaiting investment or distribution.
- 9.11 Investment of fiduciary funds.
- 9.12 Self-dealing and conflicts of interest.
- 9.13 Custody of fiduciary assets.
- 9.14 Deposit of securities with state authorities.
- 9.15 Fiduciary compensation.
- 9.16 Receivership or voluntary liquidation of bank.
- 9.17 Surrender or revocation of fiduciary powers.
- 9.18 Collective investment funds.
- 9.20 Transfer agents.

INTERPRETATIONS

- 9.100 Acting as indenture trustee and creditor.
- 9.101 Providing investment advice for a fee.

AUTHORITY: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

SOURCE: 61 FR 68554, Dec. 30, 1996, unless otherwise noted.

REGULATIONS

§ 9.1 Authority, purpose, and scope.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24 (Seventh), 92a, and 93a, and 15 U.S.C. 78q, 78q–1, and 78w.

(b) *Purpose.* The purpose of this part is to set forth the standards that apply